

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DONALD J. DOCKERY,)	
)	
Plaintiff,)	8:07cv4
)	
vs.)	MEMORANDUM AND ORDER
)	(appeal)
TIMOTHY P. BURNS, et al.,)	
)	
Defendants.)	

The appellant, Donald J. Dockery, a prisoner, has filed a Notice of Appeal (filing no. 8). In addition, the Clerk of Court has filed a Memorandum (filing no. 9) inquiring whether the plaintiff is permitted to proceed in forma pauperis ("IFP") on appeal. Even if an appellant is granted leave to proceed IFP on appeal, the Prison Litigation Reform Act ("PLRA") nevertheless requires the appellant to pay the full amount of the \$455 appellate filing fees by making monthly payments to the court. See 28 U.S.C. § 1915(b); Henderson v. Norris, 129 F.3d 481, 483-84 (8th Cir. 1997).

When the plaintiff filed this action on January 3, 2007, he moved for leave to proceed IFP (filing no. 3), supported by his trust account information (filing no. 4). Because this appeal is taken in good faith and the plaintiff qualifies financially, the plaintiff may proceed IFP on appeal.

As set forth in Henderson v. Norris, when a district court receives a prisoner's Notice of Appeal in a civil action, the court assesses the \$455 appellate filing fees. In the absence of recent certified trust account information, the court requests the information from the prisoner's institution. When the district court receives the certified copy of the inmate's trust account information, the court:

(a) calculates the initial partial appellate filing fee as provided by 28 U.S.C. § 1915(b)(1), or determines that the provisions of 28 U.S.C. § 1915(b)(4) apply....

(b) notifies the prison officials to collect and pay the initial partial appellate filing fee from the prisoner's trust account and to calculate and pay the remaining installments to the clerk of the district court until the whole of the appellate filing fee has been paid in full as provided by 28 U.S.C. § 1915(b)(2); and

(c) sends a copy of the collection order to the prisoner.

Id. at 484-85.

In this case, the court recently received the appellant's trust account information (filing no. 4), from which the court determines that, pursuant to 28 U.S.C. § 1915(b)(1), the plaintiff is responsible for an initial partial appellate filing fee of \$2.10 for the filing of this appeal. However, leave to proceed IFP on appeal does not exempt the plaintiff from liability for payment of the full \$455 appellate filing fees in installments regardless of the outcome of the appeal. In addition, by filing a Notice of Appeal, the plaintiff consents to the deduction by prison officials of the filing fees from the plaintiff's inmate trust account.

After payment of the initial partial appellate filing fee, the remaining balance of the appellate filing fees will be collected by the plaintiff's institution in accordance with 28 U.S.C. § 1915(b)(2), which states:

(b)(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

THEREFORE, IT IS ORDERED:

1. That the plaintiff may proceed IFP on appeal;
2. That in accordance with 28 U.S.C. § 1915(b), an initial partial appellate filing fee of \$2.10 shall be remitted to the court when funds are available in the plaintiff's inmate trust account;
3. That, thereafter, all future custodians of the plaintiff shall collect and remit the

balance of the \$455 appellate filing fees in the manner required by 28 U.S.C. § 1915(b)(2); and

4. That the Clerk of Court shall send a copy of this order to the parties, to the appropriate officer for the plaintiff's institution and to the Eighth Circuit Court of Appeals, and the Clerk shall process this appeal to the Eighth Circuit.

January 29, 2007.

BY THE COURT:

s/ *Richard G. Kopf*
United States District Judge